

**KENTUCKY PERSONNEL BOARD  
MINUTES OF FEBRUARY 15, 2008**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on February 15, 2008, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Christine J. Goodmann, Vice-Chairman  
Betty Gibson, Member  
Lisa T. Hendricks, Member  
Rosemary F. Center, Member  
Jackson M. Andrews, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Robert B. Frazer, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JANUARY 11, 2008**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Higgins asked for additions or corrections. Mr. Andrews moved to approve the minutes as submitted, Ms. Hendricks seconded, and the motion carried 4-0. [Ms. Gibson did not vote as she had not yet arrived at the meeting due to difficulty finding a parking space with the wrestling tournament going on at the Civic Center.] (Chairman Higgins does not vote unless noted). The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek advised that due to the length of the Agenda his report will be brief.

- Mr. Sipek reported that the Board will operate on the same amount of funds as last fiscal year's budget for the next two years. He has been advised to save funds from the first year to add to the second year's budget. No additional funds have been approved for the next Board election, so there will be some challenges ahead.

However, pursuant to “trigger” language from the last budget that passed, the Chairman can request additional funds from the Secretary of Finance, should a major issue arise (for example, the Doerting investigation). Mr. Sipek stated that he wanted to make sure that same language was re-inserted even though the dollar amount remains the same, so as not to prohibit the Board from performing duties when something out of the ordinary occurs.

- As far as proposed legislation, that has not moved forward since the last Board meeting. However, Mr. Sipek advised that staff have been involved with HB 134, Public Employees Protection Act, which is Representative Cherry’s bill. The written reprimand language from the regulation is included, almost verbatim, in the bill. If it passes, it will be included in the statutes. Mr. Sipek stated that Mr. Egbers and staff at the Personnel Cabinet were influential in discussing this with Representative Cherry. Language for Board elections and returning Veterans or service members were also included, which will be discussed later.
- Mr. Sipek stated that he has provided the Board members copies of court rulings [*Transportation v. Richard Vissing*, *Pat Harris v. Financial Institutions and Personnel Board*, and *Veterans’ Affairs v. Rebecca Smith and Personnel Board*]. Mr. Sipek stated that although there was nothing out of the ordinary, he wanted to point out the length of time it takes for an appeal to go through the court system, specifically the Pat Harris appeal. Further, Rebecca Smith has recently filed a request for investigation against the Transportation Cabinet, which has been provided to the Board, and will be discussed later.
- Mr. Sipek advised the Board that plans of moving to 1 Fountain Place have changed. Due to the Commonwealth Office of Technology (COT) recently moving out of 25, 26 and 27 Fountain Place, the Board is seeking to move staff offices there. Since COT renovated the space, it will not cost the Board as much to move. In the long-run, funds will be saved in rent by dropping 5 and 38 Fountain Place and using 28 Fountain Place for conference/meeting rooms. So far, this latest plan looks favorable.

At the conclusion of Mr. Sipek’s report, Chairman Higgins asked if there were any questions. Mr. Andrews stated he wanted to know when did the withdrawal of Veterans’ Affairs v. Rebecca Smith occur? Mr. Sipek stated that Veterans’ Affairs, after on-going discussions between the parties, filed a Motion to Withdraw. Judge Shepherd entered an order on January 23, 2008, granting that motion and dismissing the appeal. With no further questions presented, Chairman Higgins asked for the Personnel Cabinet’s report.

#### 4. PERSONNEL CABINET’S REPORT

The Hon. Dan Egbers, Executive Director for Legal Services, was present for the Personnel Cabinet and reported the following:

- Mr. Egbers was pleased to report that Sue Britton, Paralegal for Legal Services, has returned part-time from medical leave.

- Mr. Egbers reported that he was stunned when the Cabinet received a large open records request for copies of 321 disciplinary/termination letters, which needed to be redacted. The open records request was later amended to 21 disciplinary/termination letters.
- The Cabinet's regulations on the Mediation Program and the multilingual supplemental pay [101 KAR 2:034] are moving right along. However, the Education regulation is on hold because LRC wanted to discuss some of the language with the Cabinet.
- Mr. Egbers stated that the Cabinet has worked with Mr. Sipek and Mr. Crocker on HB 134, Representative Cherry's bill, which Mr. Sipek has already discussed in his report. He also stated that, like the written reprimand regulation, they are also codifying the mediation regulation and making other positive changes. However, Mr. Egbers does not understand the rationale behind the provision that an unclassified employee who is appointed to a position in the classified service serve an initial twelve month probationary period.
- HB 6, Representative Derrick Graham's bill, would establish a sick leave bank. The original proposal used a Tennessee statute superimposed upon the Kentucky statutory scheme. The Cabinet has worked with Representative Graham and he has agreed to a more manageable bill. The bank will retain sick leave hours that have been donated by either employees who are retiring or by employees who are resigning. An employee will be limited to 75 hours of leave per year, so that one employee will not put a drain on the system. Mr. Egbers stated that this bill has passed the House state government committee on February 14, 2008, with a unanimous vote.
- Mr. Egbers informed the Board that the Cabinet does not have any money either and he has heard from many small agencies where the vast majority of their budget is personnel. The Cabinet is trying to find ways to manage through this problem without enforcing layoffs.
- In regards to the investigation requested by Connie Bell, Mr. Egbers has not had any further information from her. Mr. Sipek asked if there was a timeframe for Ms. Bell to report back. Mr. Egbers advised there was not.
- Both the Kentucky Human Resources Information System (KHRIS) and the Career Opportunities System (COS) are doing very well. Mr. Egbers stated that the Cabinet has received about 11,000 on-line applications and converted about 27,000 applications. Ms. Goodmann reported that only 39 paper applications have been turned in this year.

Upon conclusion of Mr. Egbers' report, Chairman Higgins called upon the Transportation Cabinet to discuss the petitioned position request.

## 5. PETITIONED POSITION

### Transportation Cabinet, Office of Legal Services -- Administrative Coordinator

The Hon. Robert Russell, Executive Director of Legal Services, wanted to note that both he and Secretary Prather want an “era of cooperation and transparency.” He then advised that he needed to create an Administrative Coordinator position to assist him with the twelve Highway Districts. He stated that the Administrative Coordinator would handle complex and confidential legal issues (i.e. condemnations, etc.). Mr. Higgins asked why this position is non-merit and Mr. Russell stated that it was partly due to confidentiality and he needed someone to answer directly to him. If confidentiality was violated, it would certainly lead to dismissal.

Mr. Andrews moved to approve the petitioned position for Administrative Coordinator. Ms. Goodmann seconded and the motion carried 5-0.

## 6. ORAL ARGUMENTS

### A. Amanda Reece v. Cabinet for Health and Family Services

Present were the Appellant, Ms. Amanda Reece, *pro se*, who had requested oral arguments, and the Hon. Nora McCormick, counsel for the Appellee. The parties answered questions from the Board.

Chairman Higgins noted that there was a motion before the Board. Ms. McCormick stated that since the Appellant did not file Exceptions that Appellant’s request for oral argument should be denied. She further stated that since the Appellant did not file exceptions there was nothing for the Agency to respond to for oral argument. Ms. McCormick stated that the Hearing Officer’s Findings of Fact, Conclusions of Law and Recommended Order should be affirmed. Appellant stated that she wanted the Board to verbally hear what she had to say. Chairman Higgins asked the Board members if they cared to hear oral argument. Mr. Andrews wanted to hear from Mr. Sipek and Mr. Crocker. Mr. Crocker stated that since the Board is the “fact finder,” they make the final determination and it was appropriate to hear oral argument. Mr. Sipek also agreed that the Board should hear oral argument and that the Cabinet would not be prejudiced in any way.

Chairman Higgins moved to hear oral arguments before the Board. Ms. Gibson seconded and the motion carried 5-0, with Chairman Higgins voting.

Oral argument commenced and the parties answered questions from the Board.

### B. ~~Candice Smith v. Environmental and Public Protection Cabinet~~ **Moved to March**

C. Gibson Togunde v. Justice and Public Safety Cabinet

Present were the Appellant, Mr. Gibson Togunde, *pro se*, and the Hon. Will Fogle, counsel for Appellee, who had requested oral arguments.

D. Patricia Whitlock v. Kentucky State Police and Linda Thompson

Present were the Hon. Joe Mattingly, counsel for Appellant, who had requested oral arguments, and the Hon. Roger Wright, counsel for Appellee. Intervenor Linda Thompson did not appear for oral argument. It was discovered that due to clerical error the Personnel Board failed to notify her. Therefore, Chairman Higgins asked that someone call Ms. Thompson to see if she wished to appear. Mr. Wright contacted Ms. Thompson by cell phone and she advised him she did not wish to appear. Mr. Wright gave General Counsel Andy Crocker the cell phone and he also spoke with Ms. Thompson to confirm that she did not wish to appear. The parties proceeded with oral argument and answered questions from the Board.

**Lunch Break: 11:30 – 1:00** [The Board members attended the Ky. Association of Administrative Adjudicators Luncheon and heard a presentation by Judge Phillip Shepherd.]

**ORAL ARGUMENTS (Continued):**

E. Robert Tim Childers v. Justice and Public Safety Cabinet

Present were the Hon. Bob Bullock, counsel for Appellant, who had requested oral arguments, and the Hon. Will Fogle, counsel for Appellee. The parties answered questions from the Board.

F. Damon Combs v. Finance and Administration Cabinet

Present were the Hon. Kyle Thompson, counsel for Appellant, who had requested oral arguments, and the Hon. Celia Dunlap, counsel for Appellee. The parties answered questions from the Board.

G. Jo Ann Searcy v. Justice and Public Safety Cabinet

Present were the Hon. Bob Bullock, counsel for Appellant, who had requested oral arguments, and the Hon. James Godsey, counsel for Appellee. The parties answered questions from the Board.

7. **MOTIONS**

-- Requests to Enter Order Consistent with Circuit Court Judgment

A. Julie Badgett v. Commerce Cabinet

--Appellant's Request for Personnel Board to Enter Order  
Consistent with Judgment of Franklin Circuit Court

--Appellee's Objection to Request

Present were the Hon. Paul Fauri, counsel for Appellant, and the Hon. Catherine York, counsel for Appellee.

B. Joseph Lile v. Justice and Public Safety Cabinet

--Appellant's Request for Personnel Board to Enter Order  
Consistent with Judgment of Franklin Circuit Court

--Appellee's Response to Request

Present were the Hon. Paul Fauri, counsel for Appellant, and the Hon. Will Fogle, counsel for Appellee.

8. **REQUESTS FOR INVESTIGATION**

A. Department of Public Advocacy – Unfair Promotion Practices

Request by Connie Bell (Investigation No. 08-01)

--Response by Dan Egbers, Personnel Cabinet

--Response by Mary Ann Palmer, General Counsel, DPA

Ms. Hendricks moved to defer this matter to the next meeting of the Board. Mr. Andrews seconded and the motion carried 5-0.

B. Transportation Cabinet/Nelson Co. Maintenance Superintendent

Request by George Phillips (Investigation No. 08-02)

--Response by Michael Nickles, Staff Attorney for Transportation Cabinet

Present was the Hon. Michael Nickles, counsel for Appellee. Mr. Sipek advised the Board members that Mr. Phillips also has an appeal on this issue. After much discussion, the Board members decided that Mr. Phillips can request an investigation if he has additional concerns at the conclusion of his appeal.

Ms. Hendricks moved to deny the request for investigation. Ms. Center seconded and the motion carried 5-0.

- C. Department of Veterans Affairs/Transportation Cabinet  
Request by Rebecca Smith (Investigation No. 08-03)  
--Response by Dennis Shepherd, Staff Attorney, Department of Veterans Affairs  
--Response by Michael Nickles, Staff Attorney for Transportation Cabinet

Present was the Hon. Michael Nickles, counsel for Appellee. Mr. Sipek stated that Mr. Nickles has requested more time to look into this matter.

Ms. Center moved to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 5-0.

## 9. **CLOSED SESSION**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Andrews seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (3:09 p.m.) At this point, Vice-Chairman Goodmann left the Board Meeting.

Ms. Hendricks moved to return to open session, Ms. Gibson seconded, and the motion carried 4-0. (4:38 p.m.)

## 10. **MOTIONS**

-- Requests to Enter Order Consistent with Circuit Court Judgment

- A. Julie Badgett v. Commerce Cabinet  
--Appellant's Request for Personnel Board to Enter Order  
Consistent with Judgment of Franklin Circuit Court  
--Appellee's Objection to Request

Ms. Hendricks moved to deny Appellant's request for an order consistent with the judgment of the court. Ms. Gibson seconded and the motion carried 4-0.

- B. Joseph Lile v. Justice and Public Safety Cabinet  
--Appellant's Request for Personnel Board to Enter Order  
Consistent with Judgment of Franklin Circuit Court  
--Appellee's Response to Request

Mr. Andrews moved to grant Appellant's request for an order consistent with the judgment of the court. Chairman Higgins seconded and the motion carried 5-0, with Chairman Higgins voting.

## 11. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Amanda Reece v. Cabinet for Health and Family Services

Mr. Andrews moved to note Appellant's request for oral argument, Appellee's response and oral arguments, and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

B. Candice Smith v. Environmental and Public Protection Cabinet **Moved to March**

C. Gibson Togunde v. Justice and Public Safety Cabinet

Ms. Hendricks moved to note Appellee's exceptions, Appellant's response, and oral arguments, and to accept the recommended order, with clerical corrections, sustaining the appeal. Ms. Center seconded and the motion carried 4-0.

D. Patricia Whitlock v. Kentucky State Police and Linda Thompson

Ms. Hendricks moved to note Appellant's exceptions and oral arguments, and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 4-0.

E. Robert "Tim" Childers v. Justice and Public Safety Cabinet

Ms. Gibson moved to note Appellant's exceptions, Appellee's exceptions and oral arguments, and to deny Appellee's Motion to Dismiss and remand the matter for a hearing. Mr. Andrews seconded and the motion carried 4-0.

F. Damon Combs v. Finance and Administration Cabinet

Ms. Center moved to note Appellee's exceptions and oral arguments, and to defer this matter to the next meeting of the Board. Ms. Hendricks seconded and the motion carried 4-0.

G. Jo Ann Searcy v. Justice and Public Safety Cabinet

Mr. Andrews moved to note Appellant's exceptions, Appellee's Response and oral arguments, and to defer this matter to the next meeting of the Board. Ms. Gibson seconded and the motion carried 4-0.



H. Cecilia Turley v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Center seconded and the motion carried 4-0.

I. Tamera Bounds v. Justice and Public Safety Cabinet

Ms. Gibson moved to remand the matter for an additional hearing in order to review a videotape. Ms. Hendricks seconded and the motion carried 4-0.

J. Edward Davis v. Personnel Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 4-0.

K. Ralph Lynch v. Justice and Public Safety Cabinet

Mr. Andrews moved to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 4-0.

L. Dennis Mills v. Transportation Cabinet

Mr. Andrews moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 4-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following case had a show cause order entered by the hearing officer recommending that the appeal be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellant to the show cause order.

M. Ronda Paul v. Environmental and Public Protection Cabinet

Ms. Hendricks moved to find that the Appellant had not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Ms. Center seconded and the motion carried 4-0.

12. **WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Hendricks seconded and the motion carried 4-0.

A. Jacqueline Brown v. Personnel Cabinet

B. Meleeisa Dawson v. Personnel Cabinet

- C. Julie Duncan v. Personnel Cabinet
- D. Richard Hamilton v. Justice and Public Safety Cabinet and Personnel Cabinet
- E. Terrance Klein v. Cabinet for Health and Family Services
- F. Sandra McGuire v. Personnel Cabinet
- G. Timothy Rose v. Department of Military Affairs
- H. Donald Smith v. Transportation Cabinet
- I. Leslie Wainscott v. Justice and Public Safety Cabinet (2 appeals)
- J. Valerie Brock v. Finance and Administration Cabinet
- K. Lisa Brown v. Justice and Public Safety Cabinet
- L. Cynthia Conley v. Justice and Public Safety Cabinet
- M. Ralph Hammons v. Personnel Cabinet
- N. Darla Thomas v. Justice and Public Safety Cabinet

### 13. SETTLEMENTS

Ms. Hendricks moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Center seconded and the motion carried 4-0.

- A. Michael Cornwall v. Cabinet for Health and Family Services
- B. Dorothy Howard v. Justice and Public Safety Cabinet (3 appeals)
- C. Charles E. Pace v. Justice and Public Safety Cabinet
- D. Steve Stahler v. Environmental and Public Protection Cabinet
- E. Vicky Stucker v. Department of Agriculture
- F. Pamela Thrasher v. Commerce Cabinet

### 14. OTHER

- 1. HB 134, Representative Cherry's Bill

Mr. Sipek stated that Representative Cherry has language concerning reemployment rights for employees returning from military duty. Mr. Crocker stated that recently Governor Beshear's office had recently terminated a non-merit employee, returning from military duty, without cause. Mr. Sipek stated that although Representative Cherry does not need the Board's approval, he does not want any opposition to his bill. After further discussion, Chairman Higgins asked if there was any reason to oppose it. Mr. Crocker advised there is not any reason to oppose it.

- 2. Training for Unrepresented Appellants

Since Vice Chairman Goodmann needed to leave the Board meeting early, she asked Chairman Higgins to approach the idea of general training for unrepresented Appellants. Mr. Crocker stated that unrepresented Appellant's are advised of KRS Chapter 18A rights during pre-hearing conferences. Ms. Hendricks asked if information could be put on the website. Mr.

Crocker advised that the Board's website has Frequently Asked Questions (FAQ), which gives some guidance. Chairman Higgins stated maybe there could be a link to the Personnel Cabinet. After further discussion, Chairman Higgins stated that the issue would be discussed again at another Board meeting.

There being no further business, Ms. Hendricks moved to adjourn. Ms. Center seconded, and the motion carried 4-0. (4:50 p.m.)

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Greg Higgins, Chairman

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Christine J. Goodmann, Vice-Chairman

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Betty Gibson, Member

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Lisa T. Hendricks, Member

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Rosemary F. Center, Member

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Jackson M. Andrews, Member

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Robert B. Frazer, Member